

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Periodic Reporting
(Proposal Eight)

Docket No. RM2019-14

**MOTION OF THE ASSOCIATION FOR POSTAL COMMERCE
FOR ACCESS TO NONPUBLIC MATERIALS**

(October 7, 2019)

Pursuant to 39 C.F.R. § 3007.40, the Association for Postal Commerce (“PostCom”) respectfully requests access by one of its outside counsel and its President to the Nonpublic Material Provided in USPS-RM2019-14/NP1 Nonpublic Material Relating to Proposal Eight, on September 18, 2019. In particular, PostCom requests access to the impact statement filed with the Postal Service’s petition as Excel file IMPACT.PROP8.xlsx.

The Postal Service states that the material in question “includes information regarding competitive products of the type provided under seal within folders NP 15 and NP 16 in the FY18 Annual Compliance Report, as well as further analysis of that material.” Notice of Filing of USPS-RM2019-14/NP1 and Application for Nonpublic Treatment at 1 (Sept. 18, 2019). Library reference NP15 in ACR2018 is the Parcel Select / Parcel Return Service (PRS) Mail Processing Cost Model. Library Reference NP16 is the Parcel Select / Parcel Return Service (PRS) Transportation Cost Model. In the FY 2018 ACR, the Postal Service stated that these library references fall within a category of “Special Cost Studies materials that provide cost information below the product level for Competitive products.” FY 2018 ACR at Attachment 2. The Postal Service also included a “corresponding public folder” in that docket in which “cost information below the

product level relates to Market Dominant, rather than Competitive, products” and explained that “examination of the corresponding public folder should allow a person to understand the nature of the contents of the nonpublic folder, and evaluate accordingly.”

Id.

The Postal Service does not separately or specifically identify the basis for submitting the impact statement under seal in the current docket, and it does not specifically state whether this document presents cost information for competitive products below the product level. Further, unlike in the ACR docket, the Postal Service has not filed a corresponding public version of this library reference, and PostCom cannot review the public version to determine whether access to the nonpublic version is necessary to inform its comments in this docket. This filing of only a non-public impact statement is contrary to practice in previous analytical principle change dockets in which the Postal Service has filed public versions of impact statements with impacts to competitive products displayed at an aggregate level. *See, e.g.*, Docket No RM2019-6, Library Reference USPS-RM2019-6/1 – Public Material Relating to Proposal One (file SPR/Prop.1.Impact.xlsx); Docket No. RM2019-12, Library Reference USPS-RM2018-12/1 – Public Material Relating to Proposal Seven (file PublicCostImpactCarrierSupervisors.xlsx).

Nonetheless, one can reasonably assume that the nonpublic materials contain data sets as well as further analysis that could serve as a basis for the Commission’s and the public’s consideration of the Postal Service’s proposal in this docket. PostCom’s representatives therefore require access to these materials to meaningfully participate and comment on the Commission’s Proposed Rulemaking.

Accordingly, PostCom requests that the Commission authorize the following individuals to review the nonpublic material:

Matthew D. Field, partner, Venable LLP

Michael Plunket, President and CEO, PostCom

Assuming the justification for protecting the information in USPS-RM2019-14/NP1 is the same as that set forth in ACR2018, PostCom submits that there are no competitive concerns associated with providing access to the material to the individuals listed above. One of the individuals is counsel to PostCom with no role in competitive decision-making for any Postal Service competitor. The second individual is the President and CEO of PostCom, an organization that is not itself a competitor of the Postal Service and has no role in the competitive decision-making for any Postal Service competitor. None of the identified individuals are responsible for activities related to “pricing and marketing strategies” that could be detrimental to the Postal Service. Attached are executed declarations by the two individuals committing to their compliance with the terms of the protective conditions established by the Commission to limit the disclosure and use of the sealed material.

Respectfully submitted,

/s/ Matthew D. Field

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*Counsel for Association for Postal
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October 7, 2019

STATEMENT OF COMPLIANCE WITH PROTECTIVE CONDITIONS

The Postal Service has filed non-public materials identified as USPS-RM2019-14/NP1 Nonpublic Material Relating to Proposal Eight, in Commission Docket No. RM2019-14, *Periodic Reporting (Proposal Eight)*. The Postal Service has requested confidential treatment of the materials (hereinafter “these materials”).

The following protective conditions limit access to these materials. Each person seeking to obtain access to these materials must agree to comply with these conditions, complete the attached certifications, and provide the completed certifications to the Commission and counsel for the Postal Service.

1. Access to these materials is limited to a person as defined in rule 5(f), 39 CFR 3001.5(f), or an individual employed by such person, or acting as agent, consultant, contractor, affiliated person, or other representative of such person for purposes related to the matters identified as Docket No. RM2019-14, *Periodic Reporting (Proposal Eight)*. However, no person involved in competitive decision-making for any entity that might gain competitive advantage from use of this information shall be granted access to these materials. “Involved in competitive decision-making” includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with a person or entity having a proprietary interest in the protected material.
2. No person granted access to these materials is permitted to disseminate them in whole or in part to any person not authorized to obtain access under these conditions.
3. Immediately after access has terminated under rule 39 C.F.R. §§ 3007.41 or 3007.51, a person (and any individual working on behalf of that person) who has obtained a copy of these materials shall certify to the Commission:
 - (a) That the copy was maintained in accordance with these conditions (or others established by the Commission); and
 - (b) That the copy (and any duplicates) either have been destroyed or returned to the Commission.

4. The duties of each person obtaining access to these materials shall apply to material disclosed or duplicated in writing, orally, electronically, or otherwise, by any means, format, or medium. These duties shall apply to the disclosure of excerpts from or parts of the document, as well as to the entire document.
5. All persons who obtain access to these materials are required to protect the document by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of the document as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.
6. These conditions shall apply to any revised, amended, or supplemental versions of these materials provided in the matters identified as Docket No. RM2019-14, *Periodic Reporting (Proposal Eight)*.
7. The duty of nondisclosure of each person obtaining access to these materials is continuing, terminable only by specific order of the Commission, or as specified in paragraphs 9 and 10, below.
8. Each person granted access to these materials consents to these or such other conditions as the Commission may approve.
9. Any written materials that quote or contain materials protected under these protective conditions are also covered by the same protective conditions and certification requirements, and shall be filed with the Commission only under seal. Documents submitted to the Commission as confidential shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents.
10. If a court or other administrative agency subpoenas or orders production of confidential information which a person has obtained under the terms of this protective order, the target of the subpoena or order shall promptly (within 2 business days) notify the Postal Service of the pendency of the subpoena or order to allow it time to object to that production or seek a protective order.

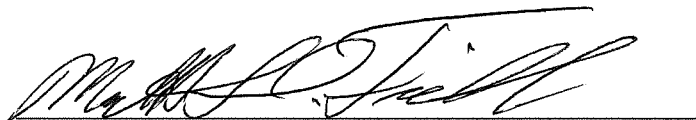
CERTIFICATION

The undersigned represents that:

Access to USPS-RM2019-14/NP1, Nonpublic Material Relating to Proposal Eight, in Commission Docket No. RM2019-14, *Periodic Reporting (Proposal Eight)*, has been authorized by the Commission.

The cover or label of the copy obtained is marked with my name. I agree to use the information only for purposes of analyzing matters at issue in the matter identified as Docket No. RM2019-14, *Periodic Reporting (Proposal Eight)*. I certify that I have read and understand the above protective conditions and am eligible to receive access to materials under paragraph 1 of the protective conditions. I further agree to comply with all protective conditions and will maintain these materials in strict confidence in accordance with all of the protective conditions set out above.

Signature:

A handwritten signature in black ink, appearing to read "Matthew D. Field", written over a horizontal line.

Matthew D. Field
Partner, Venable LLP
Counsel for Association for Postal Commerce

October 7, 2019

CERTIFICATION

The undersigned represents that:

Access to USPS-RM2019-14/NP1, Nonpublic Material Relating to Proposal Eight, in Commission Docket No. RM2019-14, *Periodic Reporting (Proposal Eight)*, has been authorized by the Commission.

The cover or label of the copy obtained is marked with my name. I agree to use the information only for purposes of analyzing matters at issue in the matter identified as Docket No. RM2019-14, *Periodic Reporting (Proposal Eight)*. I certify that I have read and understand the above protective conditions and am eligible to receive access to materials under paragraph 1 of the protective conditions. I further agree to comply with all protective conditions and will maintain these materials in strict confidence in accordance with all of the protective conditions set out above.

Signature:



Michael Plunkett
President and CEO, Association for Postal
Commerce

October 7, 2019